

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Protecting the Privacy of Customer of Broadband) WC Docket No. 16-106
and Other Telecommunications Services)

ORDER

Adopted: April 29, 2016

Released: April 29, 2016

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies requests for an extension of time to file comments and reply comments in response to the *Broadband Privacy NPRM*, as filed by the Association of National Advertisers (ANA),¹ the State Privacy & Security Coalition, Inc. (State Privacy & Security Coalition),² the American Advertising Federation (AAF) et al.,³ and the American Cable Associations (ACA) et al.⁴

2. On April 1, 2016, the Commission released the *Broadband Privacy NPRM*.⁵ In that item, the Commission proposed and sought comment on a framework for applying the privacy requirements of the Communications Act to broadband Internet access services (BIAS). The *Broadband Privacy NPRM* set dates for comments and reply comments as May 27 and June 27, 2016, respectively.⁶ The ANA, State Privacy & Security Coalition, and AAF et al. request an extension of 60 days to file comments; ACA et al. request an extension of 45 days to file comments.⁷

¹ Letter from Daniel L. Jaffe, Group Executive Vice President, Government Relations, Association of National Advertisers (ANA) to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-106 (filed Apr. 11, 2016) (ANA Request).

² State Privacy & Security Coalition, Inc., Request for Extension of Time to File Comments and Reply Comments, WC Docket No. 16-106 (filed Apr. 19, 2016) (State Privacy & Security Coalition Request).

³ Letter from American Advertising Federation, Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, Electronic Retailor Association, Electronic Transaction Association, Interactive Advertising Bureau, National Business Coalition on E-Commerce & Privacy, Network Advertising Initiative, United States Chamber of Commerce to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-106 (filed Apr. 20, 2016) (AAF Request).

⁴ American Cable Association, Consumer Technology Association, CTIA®, Internet Commerce Coalition, National Cable & Telecommunications Association, U.S. Telecom Association, and Wireless Internet Service Providers Association (ACA et al.), Motion for Extension of Time, WC Docket No. 16-106 (filed Apr. 20, 2016) (ACA Request).

⁵ See Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106, Notice of Proposed Rulemaking, FCC 16-39 (rel. Apr. 1, 2016), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-39A1.docx (*Broadband Privacy NPRM*).

⁶ See *Broadband Privacy NPRM*, FCC 16-39. The *Broadband Privacy NPRM* was published in the Federal Register on April 20, 2016. 81 Fed. Reg. 23359 (Apr. 20, 2016).

⁷ See ANA Request; State Privacy & Security Coalition Request at 1; AAF Request at 1; ACA Request at 1.

3. According to the ANA, “the potential implications of the NPRM for advertising and marketing interests are significant and far-reaching, they require sufficient and thoughtful analysis” and “the timeline provided by the Commission does not permit such analysis to be adequately concluded.”⁸ The ANA further explains that for “groups like the ANA with an extremely broad and diverse membership, being able to receive full and thoughtful input and then response to the NPRM’s questions will take time and careful considerations.”⁹ AAF et al. assert that more time is needed “to gather input on the extraordinary number of requests for comment from the many thousands of trade association members represented by the undersigned” and “to evaluate the specific terms of, and legal authority supporting” the NPRM.¹⁰ The State Privacy & Security Coalition contends that an extension is needed “to allow the Coalition to prepare thoughtful and thorough comments to the proposed rule,” as the NPRM “raise[s] a number a complex and far-reaching issues that parties like the State Privacy & Security Coalition will need time to research and study, even before putting pen to paper on any comments.”¹¹

4. ACA et al. argue that an extension is warranted because the NPRM “proposes to establish sweeping and unprecedented privacy, data security, and data breach rules for BIAS providers that raise difficult and complex legal, technical, and policy issues with broader implications for the complicated Internet ecosystem and online advertising marketplace.”¹² ACA et al. also assert that an extension is appropriate “in recognition of the hardship placed on commenters, particularly smaller providers, who are simultaneously subject to comment deadlines falling around the same date in several additional significant FCC proceedings.”¹³ According to ACA et al. “it is inaccurate to suggest that the public has had any sort of meaningful longstanding notice about the Commission’s proposals.”¹⁴

5. A group of public interest organizations filed oppositions to ANA’s and ACA’s requests for extension of time.¹⁵ In opposition to ANA’s extension request, the public interest organizations explain that (1) the issues addressed by the NPRM are “extremely important and timely,” and in order to “protect consumers without undue delay, the FCC should decide it as quickly as possible”; and (2) the questions in the NPRM are not unanticipated.¹⁶ In their April 25 Opposition to the ACA et al. Motion, the public interest organizations assert that “past statements made by the Associations suggest that proceeding toward swift resolution of this rulemaking would in fact be *beneficial* to the Associations by establishing greater certainty as to how Section 222 will apply moving forward.”¹⁷

⁸ *Id.*

⁹ *Id.*

¹⁰ AAF et al. Request.

¹¹ State Privacy & Security Coalition Request at 1-2.

¹² ACA et al. Motion at 2. *See also* Notice of Ex Parte filed by Tech Freedom, WC Docket No. 16-106, at 4-5 (filed Apr. 19, 2016) (supporting ACA Request and arguing the rulemaking involves complex legal issues).

¹³ ACA et al. Motion at 3-4; *see also* Notice of Ex Parte filed by the Competitive Carriers Association, NTCA-the Rural Broadband Association, and the Rural Wireless Associations, Inc., WC Docket No. 16-106 at 2-3 (filed Apr. 22, 2016) (explaining that the associations would “greatly benefit from more time to draft comments that adequately describe and evaluate how this rulemaking will impact competitive carriers and how our members’ concerns might be addressed).

¹⁴ ACA et al. Motion at 6.

¹⁵ New America’s Open Technology Institute, et al., Opposition to Request for Extension of Time, WC Docket No. 16-106 (filed Apr. 14, 2016) (April 14 Opposition); Center for Digital Democracy et al., Opposition to Motion for Extension of Time, WC Docket No. 16-106 (filed Apr. 25, 2016) (April 25 Opposition) (together the Oppositions).

¹⁶ April 14 Opposition at 2-3.

¹⁷ April 25 Opposition at 2.

6. It is the policy of the Commission that extensions of time shall not be routinely granted,¹⁸ and we agree with the Opposition that an extension is not warranted in this instance. Commission proceedings often involve novel and important issues, yet granting an extension is not the norm.¹⁹ Likewise, overlapping comment cycles in Commission proceedings are not unusual given the press of Commission business.²⁰ Further, the Commission has set similar comment deadlines in comparable proceedings, and we see no need to deviate from that precedent in this case.²¹

7. The Commission put interested parties on notice more than a year ago that it would address broadband privacy issues through a separate proceeding.²² There has been a great deal of public discussion about how the Commission should approach a broadband privacy rulemaking,²³ and we do not believe that the scope of the *Broadband Privacy NPRM* was unanticipated, given the existing statutory and regulatory privacy requirements that apply to voice telecommunications carriers and cable and satellite operators.²⁴ As such, we agree with the Opposition that the issues addressed by the *Broadband Privacy NPRM* are not unanticipated. Further, we agree with the Oppositions that a timely resolution of this proceeding will be beneficial for both consumers and industry alike, providing clarity and certainty going forward, and as such, an extension of the comment deadline is not in the public interest.²⁵ For these reasons, we find that the schedule established in this proceeding affords significant time for public

¹⁸ 47 C.F.R. § 1.46.

¹⁹ See, e.g., *Petition of the City of Wilson, North Carolina, Pursuant to Section 706 of the Telecommunications Act of 1996, for Removal of Barriers to Broadband Investment and Competition, Petition of the Electric Power Board of Chattanooga, Tennessee, Pursuant to Section 706 of the Telecommunications Act of 1996, for Removal of Barriers to Broadband Investment and Competition*, Order, 29 FCC Rcd 10178 (WCB Aug. 27, 2014) (denying requests for extensions of time to file comments and reply comments); *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Order, 27 FCC Rcd 8292 (WCB Jul. 25, 2012) (denying request to extend reply comment deadline).

²⁰ See, e.g., *Connect America Fund et al.*, Order, 29 FCC Rcd 10468 (WCB/WTB Sept. 3, 2014) (denying request to extend reply comment deadline).

²¹ See, e.g., *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (releasing item on July 23, 2014 and setting comment and reply comment filing deadlines as Sept. 15, 2014 and Sept. 30, 2014, respectively); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304 (2013) (releasing item on July 23, 2013 and setting comment filing date of Sept. 16, 2013, and reply comment filing date of October 16, 2013); *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (setting comment and reply comment filing deadlines 30 days and 45 days after publication in the Federal Register, respectively); *Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016) (setting comment and reply comment filing deadlines 30 days and 60 days after publications in the Federal Register, respectively).

²² *Protecting and Promoting the Open Internet*, Order, 30 FCC Rcd 5601, 5820, para. 462 (2015) (*2015 Open Internet Order*).

²³ See, e.g., FCC, Public Workshop on Broadband Privacy, Apr. 28, 2015, <https://www.fcc.gov/news-events/events/2015/04/public-workshop-on-broadband-consumer-privacy> (at 7:15) (explaining that “this is the beginning of a very important discussion”); *Broadband Privacy NPRM*, FCC 16-39, at paras. 278-292 (seeking comment on various broadband privacy frameworks and recommendations publicly proposed by various stakeholders).

²⁴ See 47 U.S.C. §§ 222, 551, 338(i); 47 C.F.R. 64.2001 *et seq.*

²⁵ See April 25 Opposition at 2-4 (“[L]ess than one year ago, broadband providers and their associations argued to the DC Circuit Court of Appeals that it should have stayed the Open Internet Order because providers simply could not comply with Section 222 without more certainty and clarify from the FCC. The Associations and others argued that the lack of clarify would cause tremendous hardship in the industry.”).

participation, and the requests for an extension of time is denied.

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.46, the Request for an Extension of Time filed by the Association of National Advertisers IS DENIED.

9. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.46, the Request for an Extension of Time filed by the State Privacy & Security Coalition, In. IS DENIED.

10. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.46, the Request for an Extension of Time filed by the American Advertising Federation et al. IS DENIED.

11. IT IS FURTHER ORDER that, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.46, the Motion for Extension of Time filed by the American Cable Association et al. IS DENIED.

12. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief, Wireline Competition Bureau